CHARITON COURIER.

C. P. VANDIVER, Editor and Proprietor. MAN WAS MADE TO HUSTLE. TERMS: 1.00 A YEAR IF PAID IN ADVANCE IF NOT PAID IN ADVANCE, $1.50.

VOLUME XXVI. KEYTESVILLE, MISSOURI, FRIDAY, MAY 14, 1897. NUMBER 16.

The Green Rape Case.

The entire community of Chariton county was shocked and surprised when it was learned that on the 12th day of August, 1896, a well-known and prosperous farmer of Clark township, Robert W. Green, had been arrested on the complaint of his wife, Missouri E. Green, charging him with the unnatural and heinous crime of ravishing his young daughter, Grace, aged between 16 and 17 years. The complaint charged that the crime was committed on or about the 20th day of March, 1896.

Sheriff J. E. Dempsey, accompanied by A. C. Phillips as deputy and to drive the carriage, went out to Mr. Green's farm near Westville to make the arrest. When they stopped at the front gate of the residence, Mr. Green, who was on the verandah eating an apple, went out to meet them. After exchanging the usual friendly greetings of acquaintances, Mr. Dempsey drew out his warrant and placed Mr. Green under arrest.

After inquiring as to the possibility of giving bail and being informed that he would not be admitted to bail under the circumstances, *Mr.* Green requested to be permitted to enter the house for the purpose of procuring a coat. This request was refused, but the sheriff himself offered to get the necessary garment. For this purpose *Mr.* Dempsey left his prisoner in charge of *Mr* Phillips, the deputy, entered the house to get the desired coat and had partly ascended the steps leading to the upper story of the house, when he heard the deputy calling on his man to halt.

At this alarm the sheriff turned and ran down the steps and out into the yard. There he beheld Green running for a corn field near by, by, with Phillips in pursuit, firing at Green's fleeing form. *Mr.* Dempsey joined in the chase and, running to a fence, he laid his pistol on a rail and took a shot at Green. The second shot brought down his game with a pistol ball in his hip. The wounded man was loaded into the carriage, brought to Keytesville and after his wounds had been dressed he was placed in jail.

When the case came up for preliminary examination before 'Squire J. *M.* De*M*oss, defendant waived examination and went to jail to await the action of the grand jury.

At the adjourned July, 96, term of the Salisbury circuit court the grand jury returned two indictments against defendant, one charging him with rape on his daughter in August, 1893, about two months before she was 14 years old, the other charging him with the commission of a similar offense on or about the 20th day of March, 1896. Afterwards, at the October term of court at Keytesville the grand jury again indicted him for the rape in August, 1893, the penalty for which is death or imprisonment in the penitentiary for not less than five years. Thereupon, the indictment at the Salisbury branch of circuit court charging the August, '93, crime was dismissed.

Upon application of defendant's attorneys, supported by a most voluminous affidavit, defendant was granted a continuance last October to the April term, 1897.

The indictment charging the '93 rape was set for trial in regular order at the April term, but on account of the sickness of one of the defendant's attorneys was specially set for trial Monday, May 10th. On that day the court ordered the sheriff to have in attendance a special venire of 75 men out of whom to select 40 qualified jurors. The greater part of Monday was consumed in questioning the venire as to their qualifications. At 4 p. m. defendant's attorneys were served with a list of the 40, from whom the state and defense were to select the 12 men that should finally try the case.

An able array of counsel had been retained on both sides. For the state, in addition to Prosecuting Attorney Collet, the prosecution had secured the services of J. C. Crawley, the Nestor of the Chariton bar; J. C. Wallace, the prosecuting attorney under whom the prosecution was begun, and Harry K. West of Marceline, one of the leading lawyers of Linn county.

The defense was represented by L. N. Dempsey, who had lately distinguished himself in the successful defense of the defendants in the so-called "Dirty Six" case; Virgil Conkling of Carrollton, one of the leading lawyers of Carroll county; and B. L. White of Marceline, one of the most successful advocates in the circuit.

Tuesday at 4 p. m. all the challenges having been made these 12 citizens were sworn to try the case:

W. D. Armstrong,	Monroe Warhurst,
Jno. Britt,	J. J. Perrin,
Jno. Musick,	Wm. Smith,
Harry Leonard,	Jno. O. Dougherty,
Wm. A. Taylor,	L. L. Williams,
Jno. Freeman,	A. D. Hart, Jr.

The state had challenged out of the 40 the following:

Thos. Pryor,	W. T. Magruder,
A. D. Hart, Sr.,	Wm. Dillon,
R. B. Kilpatrick,	J. W. Brooks,
Jos. Ralph,	J. J. Ewing.

The defense struck off the names of the following:

C. J. Hampton,	J. J. Hibler,
Wm. Clavin,	Jno. Bruner,
J. A. Haskin,	Robt. T. Knox,
Nat. W. Roberts,	Thos. Glasscock,
Sterling Price,	Al. Harding,
Jno. L. Finnell,	Robt. P. Hubbard,
Jas. Welch,	Hall A. Fleming,
Alfred G. Priest,	Robt. J. Brown,
Thos. J. Veatch,	Henry Webber,
Wm. Himmelberg,	French Mason.

The opening statement for the state was made by Prosecuting Attorney Collet. He was followed by Virgil Conkling, who outlined the plan of the defense.

Miss Alma Grace Green, prosecutrix, was the first witness for the state. She told how the father had taken her that day in August, 1893, when the offense was alleged to have been committed, with him to a plum patch on the farm, and there by force committed the awful deed of outraging her person, and threatened her with death if she ever revealed the crime. She endured the cross-examination with perfect composure, and throughout the entire time she was on the stand exhibited not the least embarrassment or feeling of any kind. She denied having approached the sheriff and Mr. Phillips after the shooting of her father and inquired why they were arresting him and telling them that he was a good father to all his children and had done nothing for which to be arrested.

Waller O. Green, an older brother, followed for the state. He knew nothing of the crime of his own knowledge, but it had been confessed to him by his sister the Saturday before the arrest. He testified that his father since that day in August, '93, had treated his family badly, and had been in a measure mean to witness. But on cross-examination gave only one instance of bad treatment, that personal to himself, but which seems not, from after circumstances, to have been very serious.

This witness was followed by Rev. O. O. Green, the oldest child. His testimony was confined exclusively to the identification of the family records of the births of the family.

Two more witnesses were put on the stand by the state, viz: A. C. Phillips and Lizzie Green, but developed nothing of material importance to the plaintiff in the case.

The defense called only three witnesses to the stand, and two of these had been summoned by the state—the defendant himself. Jas. E. Dempsey, the sheriff, and A. C. Phillips, who made the arrest.

The defendant denied emphatically and *in toto* the evidence of Grace Green. Messrs. Dempsey and Phillips contradicted Grace Green in one particular, that is, her manner and talk to them after the shooting. She had denied on cross-examination that after the shooting she came up to Sheriff Dempsey and putting her hand on his shoulder had asked why he shot her father, that he had always been good to all his children and had done nothing deserving arrest. Messrs. Dempsey and Phillips contradicted each other somewhat as to the age and physical appearance of the girl who did the talking, Sheriff Dempsey saying she was 15 or 16 and had dark hair, while Mr. Phillips thought she had light hair and was perhaps 12 or 14 years old.

Little 12-year-old Lizzie Green was put on the stand to contradict these witnesses. She claimed that it was she and not her sister, Grace, who used the language attributed to Grace, and further testified that Grace, wearing a black bonnet, was coming down the road at the time she (Lizzie) was talking. Mr. Phillips, however, who had been shown Lizzie by the prosecuting attorney, swore most positively that she was not the girl who did the talking. The entire testimony occupied but a few hours in the giving.

The court awarded two and a half hours time to each side for the argument. The speaking was begun about 5 p. m. Wednesday by J. C. Crawley for the state, followed by White for the defense, and West, Dempsey, Wallace, Conkling and Collet, alternately for the state or defense in the order named. Argument was closed at about midnight, when the case was finally given to the jury, who retired until 1 o'clock for deliberation. At that hour, not having agreed to a verdict, they were permitted to retire for the night until 8 a. m. Thursday.

The jury after being out until 6:30 p. m. Thursday reported to the court that they could not agree on a verdict and were discharged. It is told on good authority that the jury stood nine for conviction and three for acquittal, the three for acquittal being John O. Dougherty, John Freeman and W. D. Armstrong.

We heard one of the jurors who was for conviction remark that if Green had not run when the sheriff arrested him that he (the juror) believed there would have been no trouble about acquitting him.

The nine members of the jury who were for conviction, we are reliably informed, were in favor of punishment ranging from five to 10 years, which was, of course, practically life imprisonment, as the defendant at his advanced age could hardly be expected to outlive such a sentence within the walls of the penitentiary.

The other rape case against Green, who is now in his 60th year, and the father of 12 children, nine of whom are living, will be docketed for the next July term of circuit court at Salisbury, but should this case not go to trial at that time, or the state fail to convict, then the offense, which has just resulted in a hung jury, will come up for trial at the next October term of circuit court at Keytesville.

Criminal Matters.

Wm. Ashbury, an ebony-hued citizen of Bowling Green township, was committed to bastile de Dempsey Tuesday night by Baptist Hermann, constable of Bowling Green township. William was deprived of his liberty upon complaint of his wife, Maria, because he unlawfully exceeded his authority as "the head of the woman" and of the house, in correcting the faults of her, the said woman, by giving her a thrashing. The state of Missouri will act as arbitrator in the controversy at such time as Prosecuting Attorney Collet shall designate as a convenient season for him to be present at the investigation before Esquire Chas W. Steiman at Dalton, upon whose warrant the arrest was made.

Charles Litchlider, on complaint of D. M. Ware before F. M. Lewis, justice of the peace at Sumner, was committed to jail Tuesday by the constable of Cunningham township. On account of the absence of the prosecuting attorney it became necessary to continue the trial of defendant, who is accused of petit larceny, until May 18th.

James Lewis, col., was brought to jail Monday by the constable of Salisbury township. He was arrested on complaint of Malinda Pearson for a felonious assault last Saturday on Jas. Pearson with a club. The preliminary trial is set for Friday, May 14th, until which time he will languish in jail in default of bond in the sum of $300.

The [illegible]-Martin and Applegate Case Reversed.

The [illegible]se, lately decided in the court of [illegible] at Kansas City on appeal from [illegible] Chariton circuit court at Sa[illegible]y, where it was tried before W. [illegible]kwell, special judge, settles a [illegible] permitted to stand, in questions [illegible]mages for breaches of warranty [illegible]al estate that we understand has [illegible] before been directly presented to [illegible]ppellate court in this state.

[illegible]ated this is the case: Some five [illegible] years ago Dr. J. A. Egan bought [illegible] Thos. J. Martin and Lewis [illegible] Applegate the drug business and [illegible]e house and lot in this city [illegible]h the firm of Martin & Applegate [illegible]id business. The deed of conveyance from Martin & Applegate to Egan was one of general warranty, and the conveying clause read as follows: [illegible] of 20 feet front on Bridge street by 90 feet deep with building and fixtures thereon, except so far as the rights of Warren lodge, No. 74, A. F. & A. M., *affect the upper story of said building, said upper story belonging to said lodge and not intended to be conveyed herein.*"

Dr. Egan took posession of said premises under the belief, as he claims, that he had bought the exclusive title in all of the real estate on which the building was located and that Warren lodge had only an easement in and to the upper story. It was not until some time after he had entered into possession that he discovered the lodge owned a valid title to an undivided one-half interest in the realty as well.

The original conveyance to Warren lodge was by deed from Jno. F. Cunningham and wife, which conveyed to the lodge its successors and assigns an undivided one-half interest in the entire lot, the covenants being that it should be enjoyed free from "the claim, right, trouble, molestation, suit hindrance or interruption of the said parties of the second part, their heirs, executors, administrators or assigns," and that no partition of the real estate should ever be made without the mutual agreement of all the parties owning the same.

Cunningham and wife afterwards conveyed the remaining one-half of the real estate and lower story of the building to Jno. R. Hyde and Wm. H. White, subject to "all the conditions, agreements, covenants and guarantees" contained in the deed to the lodge. Several subsequent conveyances were also made, the deed in every case, until the Martin & Applegate deed, recognizing the rights of the lodge under the Cunningham deed to that body.

Upon the failure of the warranty, as he claimed, and the inability of the parties to affect a compromise, Dr. Egan instituted suit to recover the value of one-half of the lot. Judge Rucker being disqualified by reason of his relationship to one of the defendants, Hon. W. S. Stockwell was selected as special judge to try the case.

The defendants relied on the fact that plaintiff was still in possession of the premises exactly as delivered to him by them, and that he had not yielded to the owner of the superior title or acquired it. They also deposited with the clerk of the court the sum of $1 for plaintiff's damages and paid all costs then accrued.

Plaintiff contended that the covenant of seizin is an assurance that the grantor has the very estate, both in quantity and quality, which he professes to convey. Therefore any outstanding right or title which diminishes the quality or quantity of the technical seizin will be a breach of the covenant. And the covenant of seizin is broken as soon as made when the paramount title is held by a tenant in common with the covenantor. This, plaintiff held, constituted the breach in his case, as Martin & Applegate held the title to the realty in common with Warren lodge.

The court, sitting as a jury, found that because plaintiff had not been disturbed in the possession given him by defendants, he was entitled only to nominal damages, which were assessed at one dollar.

Plaintiff appealed to the Kansas City court of appeals, which tribunal reversed the judgment of the lower court and remanded the case with instructions to ascertain the value of the realty and to find a verdict and give judgment for one-half of said amount with interest at the rate of 6 per cent per annum from date of sale.

Defendants have filed a motion for a rehearing, alleging for error that the judgment of the appellate court is the result of a misunderstanding of the testimony, and is founded upon a state of facts, assumed to be true, which none of the testimony delivered at the trial below tends, even remotely, to establish, and which the trial court, sitting as a jury, expressly found not to be true.

The attorneys in the case are Messrs. Smith and Mullins for plaintiff, and C. Hammond & Son for defendants.

May Heaven Bless 'Em.

The following parties have brought joy and sunshine to the beclouded life of "the poor editor" during the past two weeks, by either renewing their subscription or becoming new subscribers to the Great Favorite Weekly:

RENEWALS.

M. F. Courtney,	J. M. Hershey,
C. H. Eidson,	C. W. Price,
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G. W. West,	John F. Whitesides,
A. Dickson,	O. L. Hampton,
R. T. Morehead,	Mrs. Lizzie Williams,
J. J. Andrews,	W. O. Sowers,
Wm. Ballinger,	F. F. Harmon,
D. B. Baker,	Mrs. Sallie E. Cage,
A. S. Pound,	J. J. Dowell,
Mrs. Annie Hunter,	John Henry,
R. G. Hunter,	Benjamin Cagle,
W. P. Price,	John Naberhans,
A. J. Wright,	Dr. I. N. Knott,
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John F. Crawford,	Miss May Deem,
A. L. Todd.	

Farmers' Mutual Insurance.

MENDON, Mo., May 12th, '97.

EDITOR COURIER:—Notwithstanding the recent assessment of 40 cents on the $100, made by the Farmers' Mutual Fire and Lightning Insurance company of Chariton county, with headquarters at Mendon, to pay losses and the false reports circulated by hired agents of "old line companies" that "everybody are sending in their policies for cancellation," the company still lives and is doing business as before.

In order that our patrons and those who think they ought to have cheaper insurance than is offered by "old line companies" may understand the status of our home company, we wish to make a brief official statement through the columns of your valuable journal.

Up to date there have been issued by the Mendon home company 648 policies, of which 39 have been returned for cancellation, leaving 609 still in force, which are being added to almost daily; not only so, but we are glad to say that the late assessment has been paid up with a degree of promptness highly creditable to the assessed as well as gratifying to the managers of the company.

It is not strange or unnatural that some who have become members of this home insurance company should tire of the burdens it imposes and drop out by the way. It is so in all human organizations, whether political, social or charitable in their nature. Neither is that divine institution, the church, free from such characters. They run well while sailing upon a smooth sea, but adverse winds rend their sails, run their crafts aground and wreck their hopes. Yours Truly,

E. E. WEVGANDT,
JOE W. INGRAM, President,
Secretary,
Farmers' Mutual Fire and Lightning Insurance Company of Chariton County.

New Cases for Circuit Court.

The following new cases have been docketed for the July, 1897, term of circuit court at Salisbury:

CRIMINAL CASES.

State of Missouri vs. John Johnson, gambling.

CIVIL CASES.

In the matter of the assignment of Thos. Foster, Eli Shire, assignee, assignment.

R. A. Grady vs. James Sanderson, appeal.

Geo. W. Cunningham et al vs. A. W. Cunningham et al, partition.

F. W. Manson vs. C. C. Coleman et al, suit on bond.

Memorial Day at Brunswick.

Pinhart post No. 268, G. A. R., assisted by neighboring posts, will celebrate Memorial day at Brunswick, May 31st, by an address and other services appropriate to the occasion. Gen. B. M. Prentiss of Unionville, the hero of the battle of Shiloh, has been secured as orator of the day. All loyal veterans of the civil war and everybody interested in such observances are cordially invited to be present.